

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.870 OF 2014

Namdeo S/o Dagdu Dal,
Age: 43 years, Occu: Agri,
R/o Narsi Namdeo, Tq : Sengaon,
District: Hingoli.

... Petitioner

Versus

1. Additional Divisional Commissioner,
Aurangabad Division, Aurangabad.
2. Additional Collector, Hingoli.
3. Sub Divisional Officer, Hingoli.
4. Thasildar Hingoli.
5. Raju Nivrutti Nagre,
Age: 59 years, Occ: Agri,
R/o Narsi Namdeo, Tq: Sengaon,
Dist: Hingoli.

... Respondents

...
Advocate for Petitioner : Mr. Pavankumar S. Agrawal
AGP for Respondent Nos. 1 to 4 – State : Mrs. V. S. Chaudhari
Advocate for Respondent No.5 : Mr. S. V. Mundhe
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 22nd NOVEMBER, 2021

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally with
the consent of the parties.

2. This petition challenges order dated 24-01-2013 in case No.2009/ROR/REV/PT/260, passed by the Additional Commissioner, Aurangabad Division, Aurangabad and the order dated 09-10-2009 passed by the Additional Collector, Hingoli in case No. Appeal/Rev/2008/A/29/Narsi/2008-2009 and also seeks confirmation of Mutation Entry No.1125 in favour of the petitioner.

3. The petitioner purchased 1 Hectare 67 R land out of survey No.48, Gat No.130, total ad-measuring 6 Hectare 17 R, situated at Narsi Namdeo, Tq. Sengaon, District Hingoli, from the owner Mr. Ganpatprasad Kashiprasad Shukala, by a registered sale deed dated 16-11-1989. On the basis of the registered sale deed, name of the petitioner came to be mutated, through his natural guardian, in the 7/12 extract as owner and possessor of the said land.

4. By an unregistered agreement of sale dated 12-04-1992, respondent No.5 agreed to purchase 81 R land from survey No.48, Gat No.130, from Mr. Ganpatprasad Kashiprasad Shukala.

5. On 08-10-1992, Mr. Ganpatprasad Kashiprasad Shukala executed a registered correction deed in favour of the petitioner, thereby granting him the cart road to approach his land in survey No.48, Gut No.130. The petitioner applied to the Talathi, on the basis of correction

deed, for mutation entry in respect of the cart road. After hearing the concerned parties, including respondent No.5 who objected to the mutation entry, the Talathi recorded M.E. No.1125 and forwarded it for sanction to the Tahsildar. After receipt of sanction from the Tahsildar, M.E. No.1125 was certified in favour of the petitioner by the Talathi.

6. Respondent No.5 filed appeal challenging M.E. No.1125 before Sub Divisional Officer, Hingoli on the ground that he was put in possession on the basis of agreement of sale and the M.E. is certified without issuing notice to the adjacent land owners. The Sub Divisional Officer allowed the appeal filed by respondent No.5 and quashed and set aside the M.E. No.1125.

7. The petitioner challenged the order passed by the Sub Divisional Officer by filing appeal before the Additional Collector, Hingoli. The appeal came to be allowed by the Additional Collector and the order of the Sub Divisional Officer was set aside and M.E. No.1125 was confirmed.

8. Respondent No.5 challenged the order passed by the Additional Collector by filing revision before the Additional Commissioner, Aurangabad. The revision came to be allowed and the order passed by the Additional Collector was set aside. This petition

impugns the order passed by the Additional Commissioner.

9. Heard the learned advocate for petitioner, the learned AGP for respondent Nos. 1 to 4 – State and the learned advocate for respondent No.5.

10. It is not disputed that, by a registered sale deed dated 13-12-1989, the petitioner purchased 1 Hectare 67 R land out of survey No.48, Gat No.130, from Mr. Ganpatprasad Kashiprasad Shukala. On 08-10-1992, Mr. Ganpatprasad Kashiprasad Shukala executed registered correction deed in favour of the petitioner thereby giving cart road to the petitioner from survey No.48, Gat No.130. On the basis of the said correction deed, after hearing the concerned parties including respondent No.5, M.E. No.1125 was certified. The Talathi was justified in certifying M.E. No.1125 on the basis of the correction deed dated 08-10-1992 after hearing the concerned parties.

11. The Sub Divisional Officer, Hingoli has erroneously proceeded to allow the appeal filed by respondent No.5 by accepting his contention that he was put in possession on the basis of unregistered agreement of sale and therefore, the said correction deed is not binding upon him and M.E. No.1125 ought not to have been certified. It is also the admitted position on record that the sale deed is executed in favour

of respondent No.5 on 11-03-1993, which is a registered document.

12. Taking into consideration the above facts and record, I am of the considered view that the Talathi was justified in certifying M.E. No.1125 in favour of the petitioner on the basis of registered correction deed executed on 08-10-1992 and the Additional Commissioner, Aurangabad was not justified in setting aside the order passed by the Additional Collector, Hingoli. No fault can be found with the certification of the M.E. No.1125 and the impugned orders passed by the Sub Divisional Officer, Hingoli and Additional Commissioner, Aurangabad are not sustainable in the facts of the present case. The Sub Divisional Officer and the Additional Commissioner have recorded erroneous reasons contrary to the record while passing the impugned order. The impugned orders, therefore, are unsustainable and liable to be quashed and set aside. Hence, the following order:

ORDER

- (I) Writ petition is allowed.
- (II) The impugned orders dated 24-01-2013, passed by the Additional Commissioner, Aurangabad Division, Aurangabad in Case No. 2009/ROR/REV/PT/260 (Exhibit-C), and the order dated 09-10-2009, passed by the Additional Collector, Hingoli in case No. Appeal/Rev/2008/A/29/Narsi/2008-

2009 (Exhibit-B), are quashed and set aside. Mutation Entry No.1125, in respect of cart road, mutated in the name of petitioner, is confirmed.

- (III) Rule is made absolute in the above terms. No costs.
- (IV) Needless to mention that respondent No.5 is at liberty to avail appropriate remedy available in law.

(NITIN B. SURYAWANSHI, J.)